

THE ARBITRATION JOB

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In Contax Partners Inc BVI v Kuwait Finance House (KFH-Kuwait) & Ors [2024] EWHC 436, the English High Court granted an order enforcing a £70 million Kuwaiti arbitration award against the Kuwait Finance House banking group (KFH). The enforcement order was then used to take out third party debt orders against KFH's bank accounts. However, when its assets were frozen KFH successfully applied to the Court to set aside the enforcement order. The reason? It was all an elaborate fraud. There had never been any arbitration or arbitration agreement between the parties. It was unknown who was behind the scam, but after re-examining the documents, particularly the arbitration award, the Court was satisfied they were bogus and it was all a big con.

The hustle

The Court receives a without notice application to enforce a Kuwaiti arbitration award

In August 2023, the English High Court received an application for an order enforcing a Kuwaiti arbitration award against KFH, under [section 66 of the Arbitration Act 1996](#).

The award was in favour of Contax, a Bahraini oil and gas company. The underlying dispute concerned Contax's attempts to liquidate its investment



accounts held by the KFH banking group.

The documents accompanying the application included an arbitration agreement between Contax and KFH, an arbitral award in favour of Contax, a judgment of Kuwait's Commercial Court of Appeal upholding the award, and witness statements from Contax's solicitor and from its Managing Director (a Mr Fantechi) about the underlying dispute, the arbitration and the Kuwaiti court proceedings.



“It did not occur to me that any of the documents might be fabrications. I was not on the lookout for fraud, and did not suspect it”.

The application was made on a without notice basis and conducted on the papers. The judge found the application and accompanying documents difficult to understand; but putting it down to a language barrier and unfamiliarity with English legal procedure, he granted the enforcement order and entered judgment against KFH. It did not occur to the judge that the documents might be dodgy, and he later reflected that he *was not on the lookout for fraud, and did not suspect it*.

The third party debt orders are taken out against KFH

KFH had to apply for set aside within 28 days of being served with the order. When this deadline expired, third party debt orders (TPDOs) were obtained against KFH's bank accounts in the amount of £70 million. However, according to KFH, the enforcement order was never served, and it only got wind of the swindle when it found out its accounts had been frozen.

Will the real Mr Fantechi please stand up?

KFH applies to have the enforcement order set aside

When KFH cottoned on, it applied to the Court to stop payment under the TPDOs and to set aside the enforcement order. The matter came back before the judge who had granted it in the first place. KFH sought set aside on two grounds: 1) that the arbitration claim for the enforcement order had been commenced without authority; and 2) that the arbitration agreement and

award did not exist.

To prove the ruse, KFH presented a witness statement from Mr Fantechi, who confirmed he was indeed the Managing Director of Contax, but that he had no knowledge of any arbitration agreement between his company and KFH, had not taken part in any arbitration or in legal proceedings in Kuwait, and had not authorised the enforcement application to the English High Court.

There were also witness statements from other persons who had allegedly appeared or given evidence and been cross-examined in the original Kuwaiti arbitration, confirming they in fact had no knowledge of the arbitration and had never taken part in it.

So, who was the mastermind behind this flimflam? Who was the real Mr Fantechi? Who was the real Contax? Who was representing Contax and who was instructing those representatives? Who was emailing the Court? Who had applied for the enforcement order and who was now instructing representatives in these proceedings? It was clear as mud to KFH and the judge what was going on.

The best-laid schemes...

KFH discovers a suspiciously similar previous English judgment

Whoever the scoundrel was, their cunning plan unravelled after KFH discovered a trump card – a 2022 judgment from the English High Court bearing a striking resemblance to the award.¹

KFH pointed out that large tracts of the Kuwaiti award against KFH were virtually identical – verbatim even – to the English court judgment. Not just the legal reasoning, but right down to the facts, issues, evidence and even the grammatical errors – it was obvious that it had all just been copied, and the names of the various companies and persons in the English judgment changed.

The judge remarked that *if the award were genuine, it would mean that the arbitration had played out in a way which was uncannily – one might say fairly miraculously – similar*.

The judge made a series of forensic observations about the documents (summarised below), concluding that the arbitration agreement, award and Kuwaiti judgment were all fakes.

1. The award
 - a. Lifted content – as explained above, the biggest giveaway was that a significant amount of the Kuwaiti arbitration award had clearly been cut and pasted from an earlier judgment of the English High Court.
 - b. No original award – there was no original of the November 2022 award and no record of it existing until the June 2023 enforcement order application attaching a copy of it.
 - c. Wrong language – the award was written in English, but under Kuwaiti law it should have been in Arabic.
 - d. No record of arbitration – the

¹ *Manoukian v Societe Generale de Banque au Liban SAL* [2022] EWHC 669 (QB). This was a case between a high net worth individual and two Lebanese banks who had refused to comply with his instructions to release money from his bank accounts.

Fraud on the court

→ The English High Court had to set aside its own order enforcing a £70 million arbitral award after it turned out to be a clever scam.



Kuwaiti arbitration centre which allegedly issued the award confirmed it had no record of any arbitration between the parties.

2. The Kuwaiti judgment
 - a. Wrong language – as with the award, the Kuwaiti court judgment was written in English, when it should have been in Arabic.
 - b. Wrong style and legal terminology – the Kuwaiti judgment was also written in the style of an English judgment, and with English legal terminology, not Kuwaiti.
 - c. Wrong judges and titles – the Kuwaiti judgment referred to judicial titles which did not exist in the Kuwaiti legal system, and the Kuwaiti judges named in the judgment were not in fact judges of the Kuwaiti court.
 - d. No record of proceedings – the Kuwaiti court confirmed it had no record of any proceedings between the parties.
 - e. Witnesses – various individuals who had allegedly been involved in the arbitration and

Kuwaiti court proceedings, including counsel, witnesses and expert witnesses, denied having any knowledge or involvement.

- f. Documentary evidence – the award and the Kuwaiti judgment both referred to a large number of other documents, but none of them had been provided.

Conclusion: Catch me if you can

Having found that the award and Kuwaiti judgment were clearly fabrications, the judge set aside the earlier enforcement order on the basis that the arbitration agreement and award did not exist.

The judge was clearly somewhat embarrassed at having granted the order in the first place, and was at pains to stress that *judges of this court have to consider very many paper applications of this type and others*. The judge noted that investigations would be required to identify who was responsible for this *serious and disquieting* fraud on the Court.

While the wheels came off in the end, this job was surely pulled by

someone in the know. Although it is a unique and unusual case, in this age of AI and increasingly sophisticated technology, *Contax* is a timely warning for the legal and ADR community, and particularly the overloaded court system, about the need for caution, careful scrutiny and to always be *on the lookout for fraud*.

About the author

Kate Holland works as a Knowledge Manager in The ADR Centre's Knowledge Management Team, working with NZDRC and NZIAC. She previously practised as a solicitor in the UK with an international commercial firm and has particular experience in trust law and succession planning in New Zealand.